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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LIBERTY MEDIA HOLDINGS, LLC,
11
12 vs. Plaintiff,
13 ERIC BROWN,
14 Defendant.
15

CASE NO. 09-CV-2284W

ORDER GRANTING
PLAINTIFF'S UNOPPOSED
MOTION FOR DEFAULT
JUDGMENT (Doc. 16.)

16 Pending before the Court is Plaintiff Liberty Media Holdings, LLC's ("Plaintiff")
17 motion for default judgment against Defendant Eric Brown ("Brown"). The Court
18 decides the matter on the papers submitted and without oral argument. See S.D. Cal.
19 Civ. R. 7.1(d)(1). For the reasons outlined below, the Court **GRANTS** Plaintiff's
20 motion.
21

22 **I. BACKGROUND**

23 On October 14, 2009, Plaintiff commenced this copyright and trademark
24 infringement action. (Doc. No. 1.) On December 4, 2009, Plaintiff filed its First
25 Amended Complaint ("FAC") adding Brown as a defendant in the action. (Doc. No.
26 5.) On January 7, 2010, Plaintiff filed a motion for entry of default judgment against
27 Brown. (Doc. No. 9.) On January 8, 2010, default was entered as to Brown. (Doc. No.
28 11.) Plaintiff has now moved for default judgment. (Doc. No. 16.)

1 **II. LEGAL STANDARD**

2 Rule 55(b)(2) of the Federal Rules of Civil Procedure governs applications for
3 default judgment. See FED. R. CIV. P. 55(b)(2). Entry of a default judgment is within
4 the trial court's discretion. See Taylor Made Golf Co. v. Carsten Sports, Ltd., 175
5 F.R.D. 658, 660 (S.D. Cal. 1997) (Brewster, J.) (citing Lau Ah Yew v. Dulles, 236 F.2d
6 415, 416 (9th Cir. 1956)). Upon entry of default, the factual allegations in plaintiff's
7 complaint, except those relating to damages, are deemed admitted. See, e.g., Televideo
8 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (quoting Geddes v.
9 United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

10
11 **II. DISCUSSION**

12 Plaintiff's FAC lists the following two causes of action against Brown: (1) federal
13 copyright infringement; (2) federal trademark infringement. (Doc. No. 5.) The Court
14 considers each claim individually.

15
16 **A. FEDERAL COPYRIGHT INFRINGEMENT**

17 To establish a claim for copyright infringement, Plaintiff must prove (1)
18 ownership of a valid copyright and (2) copying of constituent elements of work that are
19 original. Feist Publ'ns, Inc. v. Rural Tel. Serv. Co. Inc., 499 U.S. 340, 361 (1991) (citing
20 Harper & Row, 471 U.S. 539, 548 (1985)); Funky Films, Inc. v. Time Warner Entm't
21 Co., L.P., 462 F.3d 1072, 1076 (9th Cir. 2006).

22 Plaintiff has provided evidence establishing ownership of a valid copyright for
23 each of the of 70 works contained on the counterfeited DVDs. (Doc. No. 5 at ¶ 67; Ex.
24 G.) Plaintiff has also provided evidence showing Brown purchased illegally pirated
25 DVDs containing Plaintiff's copyrighted works (Id. at ¶ 38; Ex. A-B) and further
26 duplicated and sold these counterfeited DVDs for profit on eBay (Id. at ¶ 40; Ex. C).
27 Further, Plaintiff has alleged that these works are original. (Id. at ¶ 6.)

1 Therefore, Plaintiff has provided allegations and evidence sufficient to establish
2 that Brown is liable for federal copyright infringement.

3
4 **B. FEDERAL TRADEMARK INFRINGEMENT**

5 Plaintiff has failed to provide the Court with a factual or a legal basis to
6 substantiate a claim for federal trademark infringement in the instant motion for default
7 judgment. (See Doc. No. 16 at 5:12–13.) As such, Plaintiff's federal trademark
8 infringement claim is **DENIED**.

9
10 **III. RELIEF**

11 As relief for Brown's copyright infringement, Plaintiff seeks (1) statutory damages
12 in the amount of \$1,750,000; (2) a permanent injunction banning further infringement
13 of Plaintiff's work; and (3) attorney's fees pursuant to 17 U.S.C. § 502(a).

14
15 **A. STATUTORY DAMAGES**

16 The Copyright Act allows copyright owners to elect an award of statutory
17 damages, rather than actual damages, at any time before final judgment. 17 U.S.C.
18 504(c)(1). Such award must be at least \$750 but not more than \$30,000. Id. In cases
19 where the court finds the infringement was committed willfully, the court has the
20 discretion to increase the award to \$150,000. Id. at (c)(2). The award of statutory
21 damage discourages infringement by serving both compensatory and punitive purposes,
22 allowing a plaintiff to recover whether or not there is adequate evidence of harm
23 suffered by the plaintiff or gain recognized by the defendant. L.A. News Serv. v. Reuters
24 Television Int'l, 149 F. 3d 987, 996 (9th Cir. 1998); Peer Int'l Corp. 909 F.2d 1332,
25 1337 (9th Cir. 1990). If statutory damages are elected, the court has broad discretion
26 in selecting the damage award, and is constrained only by the statutory minimum and
27 maximum. Columbia Pictures Indus. v. Krypton Broad. of Birmingham, Inc., 259 F.3d
28 1186, 1194 (9th Cir. 2001) (citing Peer Int'l, 909 F.2d at 1336).

1 In this same action against another defendant, Plaintiff settled for \$15,000 per
2 violation for a total of \$990,000. (See Doc. No. 13.) Here, Plaintiff contends it is
3 entitled to \$25,000 per violation for a total of \$1,750,000 in statutory damages because
4 Brown's infringement was willful and malicious. In support, Plaintiff has produced
5 evidence showing Brown was fully aware of the illegal nature of his business. (See Doc.
6 No. 5; Ex. B, E.) Plaintiff has also shown that Brown continued to counterfeit and sell
7 DVDs for at least a month after being served with the FAC. (Doc No. 16; Ex. C.)
8 Brown's situation also differs from the other defendant because Brown continues to
9 consciously disregard this lawsuit and the judicial system. (See Doc. No. 8 (showing
10 Brown was served on December 8, 2009)) Based on the totality of the circumstances,
11 the Court agrees that Plaintiff is entitled to the requested amount.

12 Based on the evidence presented and the broad discretion the Court has in the
13 matter, the Court **GRANTS to Plaintiff an award of \$1,750,000 (\$25,000 per**
14 **violation x 70 violations).** This award is sufficient to satisfy both compensatory and
15 punitive recovery for Plaintiff.

16
17 **B. INJUNCTIVE RELIEF**

18 The Copyright Act authorizes a court having jurisdiction to grant "temporary and
19 final injunctions on such terms as it may deem reasonable to prevent or restrain
20 infringement of a copyright." 17 U.S.C. 502(a). In order to obtain a permanent
21 injunction under 17 U.S.C. 502(a), Plaintiff must show "(1) that it has suffered an
22 irreparable injury; (2) that remedies available at law, such as monetary damages, are not
23 adequate to compensate for that injury; (3) that, considering the balance of hardships
24 between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the
25 public interest would not be disserved by a permanent injunction." eBay Inc. v.
26 MercExchange, L.L.C., 547 U.S. 388, 391-92, 126 S. Ct. 1837, 164 L. Ed. 2d 641
27 (2006).

1 Under the Ebay test, Plaintiff has shown it is entitled to an injunction. Plaintiff
2 has established irreparable injury by alleging that its business reputation was irreparably
3 harmed by the confusion caused by the dual production of its copyrighted works. (Doc.
4 No. 5 at ¶ 85-93, 103; Ex. J.) And damage to reputation cannot be calculated with
5 certainty, so traditional monetary damages are inadequate to compensate Plaintiff's
6 harm. MDY Indus., LLC v. Blizzard Entm't, Inc., 616 F. Supp.2d 958, at 974 (Az. 2009).
7 Moreover, Plaintiff alleges that absent a Court Order, Brown will continue his
8 counterfeit business causing Plaintiff to suffer ongoing damages for which there are no
9 adequate remedies at law. (Doc. No. 5 at ¶ 104.) As mentioned, Brown has
10 substantiated this concern by continuing to sell counterfeited DVDs despite being
11 served with the FAC. (Doc No. 16; Ex. C.)

12 Plaintiff has also satisfied the third prong of the eBay test by showing the balance
13 of hardship weighs in its favor. A failure to enjoin Brown will result in further harm to
14 Plaintiff; while an injunction might limit Brown's ability to do business. However,
15 because Brown has failed to appear in this case, the Court finds that the balance of
16 hardships leans toward remedy in equity. Finally, the Court finds equitable remedy is
17 warranted considering the public interest in protecting the works of those who have
18 sought copyright protection.

19 Considering all four factors, the court **GRANTS** Plaintiff's request for a
20 permanent injunction.

21 22 **C. ATTORNEY'S FEES**

23 Under Section 505 of the Copyright Act, "the court in its discretion may allow
24 the recovery of full costs by or against any party... the court may also award a reasonable
25 attorney's fee to the prevailing party as part of the costs." 17 U.S.C. 505. Plaintiff
26 requests attorney's fees in the amount of \$7,188.00 the Court finds this sum to be
27 reasonable, especially in light of the relative amount of the statutory damage award.
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1 In light of the foregoing, the Court **GRANTS** Plaintiff's requests and awards
2 attorney's fees in the amount of \$7,188.00.

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4 **IV. CONCLUSION**

5 For the reasons above, the Court **GRANTS** Plaintiff's motion for default
6 judgment against Defendant Eric Brown. (Doc. No. 16.) Specifically, the Court orders:

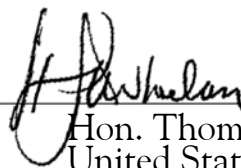
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8 1. A judgment be entered in favor of Plaintiff in the amount of
9 \$1,750,000.

10 2. Eric Brown is **PERMANENTLY ENJOINED** from printing,
11 reproducing, distributing, or otherwise making available any material that
12 infringes the plaintiff's copyright or any derivation thereof, or which by
13 imitation or other similarity to those of the copyright are likely to cause
14 confusion, mistake, dilution, or deception as to affiliation of services
15 between defendants and plaintiff.

16 3. Plaintiff is awarded \$7,188.00 in attorneys' fees.

17 **IT IS SO ORDERED.**

18 DATED: May 28, 2010

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21 Hon. Thomas J. Whelan
22 United States District Judge
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